

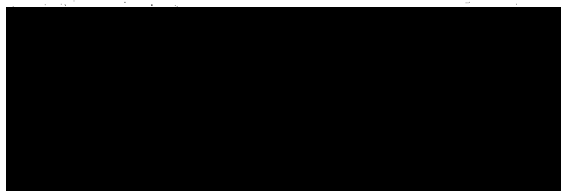
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

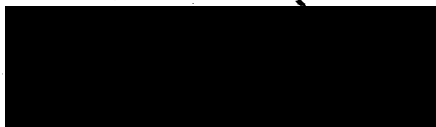
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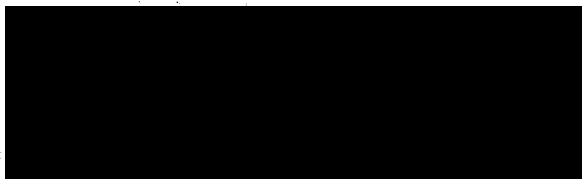
FILE: WAC 03 017 50760 OFFICE: California Service Center Date: NOV 22 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION:

The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner submitted a timely appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is restaurant and nightclub. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) in order to employ him on a part-time basis for two years to perform and render comedy skits in live musical comedy shows.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary is eligible for classification as an alien of extraordinary ability.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a native and citizen of the Philippines. On the Form I-129, the petitioner indicated that the beneficiary last entered the United States as a B-2 nonimmigrant visitor on June 7, 2002.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

- (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
 - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
 - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- (C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Criterion number one requires evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. Criterion number three requires evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

For criteria numbers one and three, the petitioner submitted two testimonials from two entertainers, [REDACTED] and [REDACTED]. Both entertainers praise the beneficiary's talent, but they fail to establish that the beneficiary has performed or will perform in a lead, starring, or critical role in events or for establishments that have a distinguished reputation.

The petitioner submitted a letter from the President of the San Isidro Labrador Association, USA, thanking the beneficiary for his outstanding performance at its Barrio Fiesta Celebration. The petitioner also submitted a letter from the Program Director of the Philippine Resource Center in San Francisco, California, thanking the beneficiary for his participation at Pistahan, an annual Filipino cultural event. The petitioner submitted a letter from the "Over-All Chairman" of the 9th Annual Fil-Am Celebration, 2003, certifying the beneficiary's participation at its festival. The evidence is insufficient to establish that the beneficiary has performed in a lead, starring, or critical role in events or for establishments that have a distinguished reputation. The letters indicate that the beneficiary participated at several civic events. The letters fail to indicate that the beneficiary played a lead, starring or critical role in these events.

The evidence on the record indicates that the beneficiary has performed in the following productions or events:

- *For the Love*, a benefit concert held at the AFP Theater, Camp Aguinaldo, Quezon City, sponsored by the Rotary Club.
- *Rewind and Play* and *The Dynamic Diva in Retro* at the Ehipto KTV Restaurant and Music Lounge in Manila.

- Jessie & Gie in *Diva 2 Diva* at the Adlib Music Hall, Quezon City.
- Jessie in *Flawless* at the Klownz Comedy Bar.
- Jessie in *Songbird* at Prima Diva Music Lounge and Comedy Bar, Quezon City.
- *Tres Mujeres* at the Library.
- At the Edna Ichan Library in South San Francisco, California: *Jessie is Fabulous. Flight of the Songbird. Picture Perfect. Back to Back. Jessie Sings Regine. Simply Jessie.*

The evidence indicates that the beneficiary has played a lead, or starring role in the above productions but the petitioner failed to establish that these establishments or organizations where the beneficiary performed have a distinguished reputation.

It is further noted that the petitioner failed to submit evidence that the beneficiary will perform in a lead, starring or critical role in the future. It is not enough to claim that the beneficiary has performed a lead role in the past. The criteria require that the petitioner establish that the beneficiary has *and* will perform in a lead, starring or critical role.

The petitioner submitted evidence that the beneficiary made appearances at several festivals including Pistahan 2002 and Pistahan 2003. The petitioner submitted still shots from a featured segment on Stateside, a show about Filipino-Americans, which aired on the Filipino Channel and San Francisco's KTSF26 on September 5, 2002. The petitioner submitted still shots of the beneficiary's interview on Balitang America, the Filipino American News Authority on the Filipino Channel. The evidence is insufficient to establish that the beneficiary played a lead, starring or critical role in the above productions and events.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

For criterion number two, the petitioner submitted several reviews about the beneficiary. The petitioner failed to establish that these reviews were published in major newspapers, trade journals, magazines or other publications. The reviews were published in the *Manila Bulletin, USA, the Filipino Guardian, the Manila Mail, the Phil Am Press, the pent Profile* (a website), *Manila Out, Sun Star Cebu, Pinoy Parin Kami, Fame Movie Magazine, Philippine and Other Asian Headlines*. One article is written in Tagalog. The petitioner failed to provide a certified translation of the article so it will not be considered. 8 C.F.R. § 103.2(b)(3). Several of the reviews are identical, which suggests that the reviews are purely promotional pieces rather than critical reviews. The petitioner failed to submit any evidence of the circulation of these publications so it failed to establish that the pieces were published in major media. The beneficiary does not satisfy this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

For criterion number four, the petitioner asserts that the AGVA consultation is evidence that the beneficiary has a record of major commercial or critically acclaimed successes. The petitioner asserts that because the beneficiary has been asked to endorse StarKargo, a freight forwarding company, he meets this criterion. The petitioner failed to establish how a favorable consultation and the beneficiary's selection to endorse a company demonstrate the beneficiary's record of major commercial or critically acclaimed successes. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

For criterion number five, the petitioner lists the following "awards, citations, and distinctions":

- 1999 Entertainer of the Year. Ehipto Music Lounge
- 2000 Tinig (Voice) of the Year Nominee. The Library.
- 2001 Tinig (Voice) of the Year Nominee. The Library.
- 2001 Adlib's Entertainer of the Year. Adlib Music Hall.
- 2002 Entertainer of the Year. Prima Diva Music Lounge and Comedy Bar.
- 2002 Most Outstanding Sing-Along Masters Comedian in a Lounge Act. Philippine Movie Press Club.
- 2002 Most Outstanding Performer. Klownz Comedy Bar.
- Three certificates of appreciation for the beneficiary's performances at three civic events.

The petitioner failed to provide testimonials to corroborate its claim that the beneficiary has received significant recognition. The petitioner submitted photographs of plaques, copies of certificates of appreciation and the beneficiary's resume. The evidence is insufficient to establish that the beneficiary has received significant recognition for his achievements. The beneficiary does not satisfy this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

For criterion number six, no evidence was submitted.

The petitioner submitted a favorable consultation from the American Guild for Variety Artists (AGVA). Consultations are advisory in nature and are not binding on Citizenship and Immigration Services (CIS). 8

C.F.R. § 214.2(o)(5)(i)(D). Accordingly, the petitioner has submitted insufficient evidence to establish that the beneficiary is eligible for the requested classification.

Beyond the decision of the director the petitioner failed to submit an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities as required by the regulation at 8 C.F.R. § 214.2(o)(2)(ii). For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.